

## **Exhibit A**



CALPINE<sup>®</sup>

717 TEXAS AVENUE  
SUITE 1000  
HOUSTON, TEXAS 77002  
713.830.2000  
713.830.2001 (FAX)

January 11, 2007

Gas Transmission Northwest  
1400 SW 5<sup>th</sup> Avenue, Suite 900  
Portland, Oregon 97201  
Attention: Jeff Rush  
Vice President and General Manager

Re: GTN Contract No.: 8115  
GTN Contract No.: 8155  
GTN Contract No.: 8158  
GTN Contract No.: 8194  
GTN Contract No.: 8428

Dear Mr. Rush:

As Gas Transmission Northwest is aware, Calpine Energy Services, L.P. is a debtor and debtor in possession in procedurally-consolidated chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Southern District of New York, Case No. 05069299-BRL. Please be advised that Calpine Energy Services, L.P. has determined that the above-referenced contracts (the "Contracts") provide no benefit to its estate.

Consequently, effective immediately, Calpine Energy Services, L.P. will no longer accept service under the Contracts, and Calpine Energy Services, L.P. hereby releases and relinquishes any right to ongoing service or capacity under the Contracts.

Sincerely,

Jeffrey Kinneman  
VP, Structured Finance & Strategy

*JK*  
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## **Exhibit B**

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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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In the Matter  
of

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Case No.  
05-60200

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CALPINE CORPORATION,

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Debtors.

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April 11, 2006

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United States Custom House  
One Bowling Green  
New York, New York 10004

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Mtn of Gas Transmission Northwest Corp., Portland  
Natural Gas Transmission System, and Transcanada  
Pipelines Limited to enforce stipulation and to  
18 compel Debtors to replenish assurance; notice  
rejecting certain executory contracts and unexpired  
19 leases; mtn to extend exclusivity.

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B E F O R E:

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HON. BURTON R. LIFLAND,

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Bankruptcy Judge.

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2 A P P E A R A N C E S :

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4 KIRKLAND & ELLIS LLP  
5 Attorneys for Debtors  
6 153 East 53rd Street  
7 New York, New York  
8  
9 BY: MATTHEW A. CANTOR, ESQ., of Counsel  
10 -and-  
11 BY: ROBERT G. BURNS, ESQ., of Counsel  
12 -and-  
13 BY: EDWARD O. SASSOWER, ESQ., of Counsel  
14 -and-  
15 BY: ROSS M. KWASTENIET, ESQ., of Counsel  
16  
17 AKIN GUMP STRAUSS HAUER & FELD LLP  
18 Attorneys for Creditors' Committee  
19 590 Maidson Avenue  
20 New York, New York  
21  
22 BY: PHILIP DUBLIN, ESQ., of Counsel  
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2 A P P E A R A N C E S (Continued) :  
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7 NIXON PEABODY LLP  
8 Attorneys for Wilmington Trust, as

9 Collateral Agent  
10 437 Madison Avenue  
11 New York, New York  
12  
13 BY: RICHARD J. BERNARD, ESQ., of Counsel  
14  
15  
16  
17  
18 ROPES & GRAY LLP  
19 Attorneys for U.S. Bank, as Trustee -  
20 Tiverton and Rumford Projects  
21 45 Rockefeller Plaza  
22 New York, New York  
23  
24 BY: KEITH H. WOFFORD, ESQ., of Counsel  
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2 A P P E A R A N C E S (Continued) :  
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5 ELROD, PLLC  
6 Attorneys for Transcanada, Portland and  
7 GTN Pipelines  
8 500 North Akard  
9 Dallas, Texas  
10  
11 BY: DAVID W. ELROD, ESQ., of Counsel  
12  
13

14 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
15 Attorneys for Unofficial Committee of 2d  
16 Lien Debtholders  
17 1285 Avenue of the Americas  
18 New York, New York  
19

20 BY: ALAN W. KORNBERG, ESQ., of Counsel

21 -and-

22 BY: ELIZABETH R. MCCOLM, ESQ., of Counsel  
23  
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2 A P P E A R A N C E S (Continued) :  
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7 BROWN RUDNICK, ESQS.  
8 Attorneys for Law Debenture  
9 One Financial Centre  
10 Boston, Massacuhsetts  
11

12 BY: STEVEN B. LEVINE ESQ., of Counsel  
13  
14  
15  
16

17 KAYE SCHOLER LLP  
18 Attorneys for PMCC

19 425 Park Avenue  
20 New York, New York  
21

22 BY: RICHARD G. SMOLEV, ESQ., of Counsel  
23  
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2 A P P E A R A N C E S (Continued) :  
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5 SHIPMAN & GOODWIN LLP  
6 Attorneys for U.S. Bank, Trustee - South  
7 Point  
8 One Constitution Plaza  
9 Hartford, Connecticut  
10

11 BY: IRA H. GOLDMAN, ESQ., of Counsel

12 -and-

13 BY: CORRINE L. BURNICK, ESQ., of Counsel  
14  
15

16 MILBANK, TWEED, HADLEY & McCLOY LLP  
17 Attorneys for Broad River, Rockgen and  
18 South Point Lessors  
19 1 Chase Manhattan Plaza  
20 New York, New York  
21

22 BY: WILBUR F. FOSTER, JR., ESQ, of Counsel  
23



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2 A P P E A R A N C E S (Continued) :

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10 DIEDRE MARTINI, ESQ.

11 United States Trustee

12 33 Whitehall Street

13 New York, New York

14

15 BY: RICHARD C. MORRISSEY, Esq., of Counsel

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2 P R O C E E D I N G S

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4 MR. CANTOR: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. CANTOR: Matthew Cantor of Kirkland

7 & Ellis on behalf of the Debtors. I have a number of

8 colleagues here for various motions. What I would

9 like to go through is some of the uncontested matters

10 first. Robert Burns, my colleague, will be handling

11 the insurance motion and a relief from stay notice of

12 presentment.

13 MR. BURNS: Your Honor, the committee

14 would have a very brief submission and will allow

15 them to go first.

16 MR. DUBLIN: Good morning, Your Honor.

17 THE COURT: Is it a secret motion?

18 MR. DUBLIN: It was until yesterday.

19 Philip Dublin on behalf of the committee.

20 The motion represented today is to amend

21 slightly the protocol that you approved back in

22 February with respect to the committee's obligation

23 to provide information to unsecured creditors under

24 the new Section 1102(b)(3)(A). What we would like to

25 do is exclude from the requirement of third parties

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2 providing information to unsecured creditors of the

3 Debtors' Canadian affiliates filing proceedings in

4 Canada. We had a meeting last week with the Debtors'

5 professionals and professionals of the Canadian

6 Debtors where we learned a couple of things about the  
7 enterrelationship between the U.S. and the Canadian  
8 Debtors, as well as obtaining the understanding that  
9 the Canadian Debtors' can assert certain claims  
10 against the U.S. Debtors have established a June 30  
11 Bar Date for U.S. creditors to assert claims. They  
12 also established a data room, where they have agreed  
13 the committee can have access to as long as we  
14 execute a confidentiality agreement. The other  
15 condition is they be excluded from the information  
16 protocol, that if other creditors here in the States  
17 want to get access to that information they don't go  
18 through the committee, they have to go through the  
19 Canadian Debtors. The Canadian Debtors said they can  
20 sign a confidentiality agreement to enable them to  
21 get access to that information as long the agreement  
22 is signed.

23               We served notice of the motion, pursuant  
24 to your Order either by protocol or by hand on all  
25 but a few parties. Where we were unable to get

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1  
2 e-mail addresses for those based on their location,  
3 we did serve those parties by overnight mail. I  
4 understand if their ability to respond was  
5 compromised, so we would extend to any of those  
6 parties, reach out to deal with them on a one-on-one  
7 basis.

8               I don't know if the Court has any  
9 questions. But based on the timing of the nature of  
10 how quickly we need to get back a bunch of

11 information in the data room and the June 30 Bar  
12 Date, we would like to be here on an emergency basis.  
13 MR. CANTOR: Your Honor, Matthew Cantor  
14 on behalf of the Debtors. We have no objection to  
15 the motion. We conferred with Canadian counsel. For  
16 any parties in interest that want to get information  
17 that the Canadian counsel has, there is actually a  
18 website that has been established by Canadian counsel  
19 up there where there is a link to get the  
20 confidential agreement executed and delivered, and  
21 then a creditor or another party in interest can get  
22 access. What I will propose to do, we will post this  
23 link on our website, here on the Calpine website so  
24 it won't be an issue for anybody trying to get this  
25 information in order to have access to it.

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2 THE COURT: Does anyone else want to be  
3 heard?

4 (No response.)

5 THE COURT: Essentially, you are asking  
6 me to grant comity to the requirements of the  
7 Canadian proceeding. I am certainly prepared to do  
8 that without inviting them to come here and file a  
9 Chapter 15 in order to get that accomplished.

10 MR. DUBLIN: Thank you.

11 May I approach?

12 THE COURT: Yes.

13 MR. DUBLIN: (Hanging.)

14 THE COURT: I have approved the Order.

15 MR. DUBLIN: Thank you.

16 MR. BURNS: Your Honor, good morning.  
17 Robert Burns for Kirkland & Ellis, here on behalf of  
18 the Debtors.  
19 Your Honor, I have two motions today.  
20 The first relates to the motion pertaining to the  
21 Debtors' prepetition loan-back agreement, which  
22 relates to the Debtors' captive insurance company.  
23 Your Honor, on January 4 you entered an Order, which  
24 was interim in part and final in part. The final  
25 component authorized the Debtors to maintain their

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2 existing insurance policies to go forward and buy new  
3 insurance policies as they became necessary in the  
4 course of their business and to pay premiums,  
5 including both pre and postpetition amounts.

6 Your Honor, there was also an issue with  
7 regard to the \$18 million prepetition loan-back  
8 agreement between Calpine and a company called CPN,  
9 which is the captive insurance company. At the  
10 January --

11 THE COURT: That was the one in Hawaii?

12 MR. BURNS: That is correct.

13 In the January 4 authority you granted  
14 interim authority to allow the Debtors to repay up to  
15 \$18 million to the captive insurance company. Your  
16 Honor, since the entry of the Interim Order the  
17 Debtors have engaged two reputable insurance brokers.  
18 The first is HRH, and the second one is Willis  
19 International. These brokers were retained to assist  
20 the Debtors with the process of trying to design the

21 most effective insurance program for going forward.  
22 Your Honor, this insurance program covers a wide  
23 variety of the Debtors' operations, including  
24 property insurance, insurance relating to the  
25 Debtors' employees, and a variety of other insurance

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2 policies that are necessary for the Debtors to  
3 operate.  
4               Your Honor, the Debtors, with the  
5 assistance of the two insurance brokers, considered  
6 three options. The first option was to maintain the  
7 existing program, which included the repayment of  
8 some, but not all, of the prepetition loan-back  
9 agreement and to continue with this captive insurance  
10 program on a going forward basis. The second option  
11 was to pay the claims due on a prepetition basis  
12 relating to the loan-back agreement and insurance  
13 programs but go to the market, the insurance markets  
14 and buying new third-party market insurance on a  
15 going forward basis. And the third option, Your  
16 Honor, was to basically not repay any amounts under  
17 the loan-back agreement and go to the markets purely  
18 on a going forward basis for new programs. Based on  
19 an analysis by the Debtors' brokers, it was  
20 determined that the second option, which was to pay  
21 back some of the loan-back agreements and go forward  
22 into the insurance markets for new coverage, which  
23 would be approximately fifteen to twenty-two percent  
24 higher than maintaining the existing captive program.  
25 The third option, which was to not repay any amounts

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2 under the prepetition loan-back agreement and simply  
3 go to the market was determined to be somewhere in  
4 the range of thirty-five percent, fifty-two percent  
5 higher than maintaining the existing program.

6 Your Honor, in addition, the Debtors  
7 worked very closely with both the Official Committee  
8 and the committees of the first and second lien  
9 debtholders to give them substantial review of both  
10 economic and legal implications of the insurance  
11 programs. I believe I can represent that both the  
12 Official Committee and the Ad Hoc Committees are in  
13 agreement with the proposed insurance program, which  
14 is, Your Honor, to pay up to \$35 million of the  
15 prepetition loan-back from Calpine down to the  
16 captive insurance program and maintain captive on a  
17 going forward basis.

18 Your Honor, I think it was in our prior  
19 motion, but the insurance policies are critical to  
20 the Debtors' continued operations. These insurance  
21 programs is required under several of the Debtors'  
22 loan agreements and other agreements, including the  
23 Debtors' financing facility. As, I think, Your Honor  
24 is aware, or as set forth in our maintenance of these  
25 insurance policies is required by certain of the

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2 United States Trustee's operating guidelines here in  
3 the Southern District of New York.

4 THE COURT: Does anyone want to be  
5 heard?

6 (No response.)

7 THE COURT: I hope that my reluctance in  
8 allowing you the full \$35 million on the first day  
9 hearing didn't spark an expensive review of the  
10 program, only to come back and give you the rest of  
11 what you requested originally.

12 MR. BURNS: I can represent there is a  
13 brokerage fee payable to HRH, which is, I believe, in  
14 the approximate amount of \$235,000. Your Honor, even  
15 absent the Chapter 11 proceedings, that sort of  
16 broker arrangement would have been required, so it's  
17 not active. With respect to Willis, actually they  
18 did their review, which was very extensively reviewed  
19 as a courtesy to the Debtors as in relation to the  
20 other matters to do with the Debtors. So it is no  
21 problem with regard to them.

22 THE COURT: Your application is  
23 approved. I will entertain an Order either now or at  
24 the end of the hearing.

25 MR. BURNS: If you would like, Your

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2 Honor, I can pass it up right now.

3 THE COURT: Sure.

4 MR. BURNS: (Hanging.)

5 THE COURT: I have approved the Order.

6 MR. BURNS: The second matter I have is



7 a stipulation between the Debtors and the estate of  
8 Rodney Mc Vay. Your Honor, this relates to a  
9 prepetition injury which took place on the Debtors'  
10 facilities where an independent contractor was killed  
11 while working on the work site. The minor child of  
12 the independent contractor has brought a lawsuit  
13 against the estate seeking damages in relation to the  
14 death. Your Honor, the stipulation relates solely to  
15 insurance proceeds. The Plaintiffs in the --

16 THE COURT: Does anyone want to be  
17 heard?

18 (No response.)

19 THE COURT: The application is granted.

20 MR. BURNS: Thank you, Your Honor.

21 May I pass up an Order?

22 THE COURT: You may.

23 MR. BURNS: (Handing.)

24 THE COURT: I have approved the Order.

25 MR. CANTOR: Your Honor, the next

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2 matter I would like to take, as we get into the  
3 contested matters, I would like to skip to the second  
4 one and take that first. It's the motion with  
5 respect to the Debtors' application for an Order  
6 extending the time within which the Debtors must  
7 assume or reject unexpired leases of nonresidential  
8 real property.

9 Your Honor, the motion was served and  
10 filed on March 29. The date which the period expires  
11 where the Debtors must assume or reject contracts is

12 April 18, by our calculation. Your Honor, the motion  
13 was served and filed on the United States Trustee,  
14 the counter-parties to our nonresidential real  
15 property leases and the 2002 list. We received three  
16 objections yesterday. We filed and served a  
17 responsive pleading.

18 Your Honor, the factors are threefold in  
19 determining whether or not the Debtors should get an  
20 extension of time to assume or reject contracts: It  
21 is whether or not the leases are important assets,  
22 since that decision to assume or reject is important  
23 to a Plan of Reorganization; whether the case is  
24 completed and involves a large number of leases; or  
25 whether or not there has been insufficient time to

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2 make a determination whether or not to assume or  
3 reject these leases.

4 Your Honor, we have a case with 273  
5 Debtors. There are over 400 leases of nonresidential  
6 real property at stake. Many of the leases are  
7 essential to a Plan of Reorganization in this case.  
8 As you know, the company is a large producer of  
9 power. The kind of leases we are talking about here  
10 are geothermal mineral leases, office leases, ground  
11 leases for power generation facilities, oil and gas  
12 pipeline leases, and construction lay down leases for  
13 properties which are constructing projects. As far  
14 as what we had been doing in the case is that we  
15 require more time to assume these leases.

16 The Debtors, for which we are seeking

17 extensions, are set forth in Schedule 1 to Exhibit A  
18 of the exhibit. Exhibit A is the proposed Order.  
19 Your Honor, we had been involved in putting together  
20 the schedules. As you know from the very complex  
21 Debtor-in-Possession financing and cash collateral  
22 process, we have as part of our obligation in  
23 connection with that of adequate protection to our  
24 secured lender is to develop a list of designated  
25 properties, develop accounting strategies to

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2 determine which projects are valuable and profitable  
3 and move quickly to turn back those projects which we  
4 will confer with our secured lender and our Official  
5 Creditors' Committee determine what not to be part of  
6 what should be the core business here. We are in the  
7 middle of that process now. We have determined a  
8 number of leases and projects that we will turn back,  
9 they were on our first list of designated assets. In  
10 fact, some of the counter-parties are here, who filed  
11 objections, that is sensitive to these projects. But  
12 we are right in the middle of that process, and we do  
13 think that will be critical to getting to the plan  
14 process.

15 I think it is fair to say this case is  
16 complex with these number of Debtors, the regulated  
17 nature of the business. In fact, one of the  
18 issues that we first ran into, which we had argued up  
19 at the 2d Circuit only yesterday, is the issue of the  
20 Bankruptcy Court to determine to hear and determine  
21 motions to reject contracts. And we are hoping we

22 get a decision shortly out of the 2d Circuit that  
23 will give us some clarity as how we should go about  
24 undertaking this process. So between the DIP and the  
25 schedules, we had been here before you over the last

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2 couple of weeks with human resources issues, we had  
3 been both reducing the work force and recently lost a  
4 number of employees down on our Drake operations in  
5 Houston, and we are managing ourselves through this  
6 process.

7               So given all those things, I will submit  
8 to Your Honor that in addition to these projects  
9 being important assets to their respective Debtors,  
10 and the case being complex, and in view of that we  
11 don't believe 120 days is a sufficient amount of  
12 time, and I think that given those facts, we have  
13 satisfied the standards for the extension.

14               We have received two objections, three  
15 objections relating to these projects. We first have  
16 the objection of U.S. Bank, as Trustee of Tiverton &  
17 Rumford projects. The second set of objections is  
18 from U.S. Bank, as the owner-lessor at Broad River,  
19 Rockgen and South Point. We call them the three  
20 pack. And also objection filed by Mr. Foster on  
21 behalf of the owner-lessors at those projects.

22               With respect to the Rumford-Tiverton  
23 objection, Your Honor, we are not seeking to extend  
24 the time in which to assume or reject those leases  
25 relating to those Debtors where we are the lessees.

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2 In fact, there has been some dispute with respect to  
3 those rejection notices. There has been a fair  
4 amount of negotiation about the terms of that  
5 give-back. I think what is interesting here is on  
6 April 18, by virtue of Section 365(d), those leases  
7 will be terminated, for those which we have not  
8 gotten extensions. So I don't believe we have an  
9 objection here that is really an objection to the  
10 relief, since we haven't asked to extend those  
11 leases.

12 With respect to the three pack  
13 objections, the objection from Milbank, Tweed and  
14 from Ropes & Gray, --

15 MR. GOLDMAN: Shipman & Goodwin.

16 MR. CANTOR: Sorry about that.

17 -- the objections do not dispute the  
18 facts set out for you concerning the complexity of  
19 the cases, the force of those leases, the properties  
20 and the insufficiency of time. In fact, many of the  
21 objections you are seeing here, these were parties  
22 who objected to the Debtor-in-Possession financing on  
23 the basis that we were not focusing on those Debtors,  
24 rather reviewing those cases in an integrated whole.  
25 I think that is the appropriate way to look at it to

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1  
2 consider these motions. Even if we were to accept  
3 their view, clearly those leases are the primary

4 assets of those Debtors, and we need an extension of  
5 time to determine what we are going to do with that  
6 three pack, those three projects.

7           Their objections goes to an issue of  
8 adequate assurance of future performance. You should  
9 know with respect to the three pack, that on May 30,  
10 I think is the date, there is a rent payment due,  
11 which is approximately thirty-four and a half million  
12 dollars. Their pleadings suggests we should be  
13 required to make some commitment here in Court to  
14 make that payment. Providing adequate assurance of  
15 future performance is not required for obtaining an  
16 extension under 365(d)(4). And in fact, I suspect  
17 our obligation to pay that on May 30 will have some  
18 impact on how fast we will consider what we are going  
19 to do with that. If we can conclude it is something  
20 we will not be keeping, we will try to void that  
21 payment. Obviously, if we still have it and we are  
22 obligated to pay it on May 30, they have their rights  
23 under the law. So I think those objections should be  
24 overruled. I can leave it to the counter- parties to  
25 make their case.

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2           MR. WOFFORD: Your Honor, Ketih Wofford  
3 from Ropes & Gay with respect to the Tiverton and  
4 Rumford projects for which U.S. Bank is serving as  
5 Trustee.

6           We have no dispute with the legal  
7 standard stated by the Debtors' counsel with respect  
8 to whether an extension would be granted. We merely

9 note that Tiverton and Rumford were both listed on  
10 the schedules as an entity seeking an extension. But  
11 in contrast with the papers received from the  
12 Debtors, they appear to be saying there are no real  
13 property leases to which an extension would apply.  
14 If the Debtors' view is that there are no such  
15 leases, then we simply would ask for purposes of  
16 clarity that Tiverton and Rumford be withdrawn from  
17 the motion and the motion be denied with respect to  
18 those entities. If there is any ambiguity, we only  
19 ask, if the Debtors are not listed in their schedules  
20 and statement of affairs, we would like the motion to  
21 be denied with respect to those entities. To the  
22 extent there is ambiguity, we would like it to be  
23 made clear those extensions are being granted, or in  
24 the alternative the motion is withdrawn and will give  
25 the right of the rejection notice.

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2 Again, the primary economic purpose of  
3 the time, that is letting them have time to make  
4 their decision is met, they have made their decision,  
5 they have cut the properties off from funding, we  
6 would like them to clarify by withdrawing or have you  
7 deny the motion as to those two entities.

8 MR. CANTOR: Your Honor, I am given to  
9 understand that the Debtors for which those Debtors  
10 are the lessees of nonresidential real property, they  
11 are not intended to be included in the list. After  
12 the hearing, if that gets Mr. Wofford comfortable,  
13 those Debtors will not be included in the list of

14 entities to which we are seeking extensions. There  
15 may be properties where we are the lessors. We want  
16 to ensure that there is an extension. 364 would not  
17 necessarily require that, although I don't see why  
18 there would be any harm there.

19 But I think making it clear on the  
20 record, we can make Mr. Wofford comfortable that all  
21 the Debtors on which we are the lessees of  
22 nonresidential real property, relating to  
23 Rumford-Tiverton, they are not to be included in the  
24 list of Debtors for which we are seeking extension.  
25 In fact, those leases will be terminated on April 18

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1  
2 by virtue of the Code.

3 MR. WOFFORD: Your Honor, that is  
4 acceptable. We merely note on behalf of the Trustee  
5 or the other concern stated in the response, which is  
6 merely that both sides have ongoing issues as to what  
7 properties are characterized as real property versus  
8 personal property, and we will deal with those issues  
9 another day.

10 MR. GOLDMAN: Your Honor, Ira Goldman of  
11 Shipman & Goodwin on behalf U.S. Bank. I guess we  
12 are counsel to the three pack deal that involves  
13 Rockgren, South Point and Broad River. We filed an  
14 objection. U.S. Bank essentially represents these  
15 entities that is secured by the rights under those  
16 leases. And Mr. Foster of Milbank will subsequently  
17 speak on behalf of the lessors themselves, who have  
18 an economic interest in this also.



19                   Our concern really began with language  
20   that Calpine included in their motion. And what they  
21   said was they assure the Court that lessors will not  
22   be prejudiced by the extension of time because the  
23   Debtors will continue to perform in a timely manner  
24   on the undisputed postpetition date obligations under  
25   expired leases. We read that. And really our

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2   objection or limited objection was just to basically,  
3   first of all, make sure that was in the Order as well  
4   as in the motion, and second, to understand what that  
5   was with a little more precision, because there is a  
6   thirty-four and a half million dollar rent payment,  
7   semiannual rent payment that is due on May 30, which  
8   is only six weeks after the relief that they are  
9   seeking would be granted.

10                   The reason for our concern are  
11   justifiable. Because U.S. Bank also served as  
12   Indenture Trustee in the so-called Rumford-Tiverton  
13   transaction, which in many ways is a mirror image of  
14   this three pack deal. In that case Your Honor may  
15   recall from the DIP hearing there was a rent payment  
16   due shortly after the case began on, I think, January  
17   15, and there was some dispute, but I don't think  
18   they disputed the fact there was at last some per  
19   diem payment that was required. On April 11, U.S.  
20   Bank had not gotten a penny on that rent payment. So  
21   I think there is reason to be concerned.

22                   Our other concern, although there was  
23   assurance that the Debtors would continue to perform,

24 obviously this case involves a lot of separate  
25 Debtors. And, in fact, except for the fact our

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2 Debtor is listed, there is no particular focus on the  
3 lease. In fact, I should really say that the leases  
4 we are talking about are facility leases and ground  
5 leases. There are open questions as to whether these  
6 are nonresidential real estate leases or personal  
7 property leases or perhaps would be recharacterized  
8 as something else. All the parties throughout have  
9 retained all of their rights. We have done so again  
10 and I suspect Calpine will do the same.

11           Assuming for the moment that Tiverton  
12 was a nonresidential real property lease and we were  
13 getting their assurance they will perform in a timely  
14 manner, we were concerned about the possible  
15 administrative insolvency of the particular lessee  
16 that was making this request. Because even though,  
17 as Mr. Cantor said again, it is one integrated  
18 enterprise, I don't necessarily think they were  
19 saying here that Calpine Corporation would take care  
20 of these timely payments in any event. So we wanted  
21 some assurance that we were going to be assured on  
22 the one hand that they would continue to perform in a  
23 timely manner, then be told down the road, "Well,  
24 your particular obligor was administratively  
25 insolvent." If that were the case, I don't think

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2 they should be seeking this relief, because they  
3 can't state to the Court they will continue to  
4 perform in a timely manner. So we were seeking  
5 clarification in that regard also.

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7 The response, which was filed last  
8 night, last evening, did some things that really  
9 surprised me. First of all, it took issue with the  
10 fact that they have to make timely payments at all.  
11 And I couldn't tell whether they were only doing that  
12 to argue to Your Honor whether they have made timely  
13 payments or not is not the sole basis on which the  
14 Court is supposed to make the determination to grant  
15 an extension. We don't have any problem with that.  
16 In fact, up to now I don't think in the three pack  
17 deal they haven't failed to perform in a timely  
18 manner. The test is going to come on May 30. But  
19 the implication that they don't have to perform in a  
20 timely manner, if that is what they are saying,  
21 really does disturb us, because under 365(d)(3) they  
22 have to perform in a timely manner; meaning, make the  
23 payment when it is due. And we think that the Court  
24 in the case of Puggies, 239, Bankruptcy Reporter 688,  
25 a 1999 case, is very clear that these are payments  
that are supposed to be made without having to seek

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2 any further motion.

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4 The other thing they did was they gave  
the example, which Mr. Cantor just gave again, that

5 perhaps once they get this done substantially, they  
6 will wait until May 29 and decide if they really  
7 don't need these facilities, reject them, and then  
8 they won't have to make the May 30 payment. Which  
9 really surprised us, because these are arrears  
10 payments. And, in fact, it was Mr. Cantor who first  
11 pointed that out to me at the DIP hearing in regard  
12 to the Rumford-Tiverton lease. But these leases are  
13 structured the same way.

14 And to the extent that they are taking  
15 the position that notwithstanding the fact that these  
16 are arrears payments, they can wait until May 29 and  
17 then not pay the per diem amounts for all of those  
18 days in the post-periods that have gone by from the  
19 filing until the date that they reject is very  
20 disturbing and really cuts right against what they  
21 are saying, which is that the Debtors will continue  
22 to perform in a timely manner. We are expecting that  
23 while they are running these facilities, we are  
24 getting a portion of our rent in arrears. And it  
25 would surprise us if the Debtors --

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2 THE COURT: It's not what the agreement  
3 calls for.

4 MR. GOLDMAN: Excuse me?

5 THE COURT: It calls for semiannual  
6 payments.

7 MR. GOLDMAN: Semiannual payments and  
8 arrears. But I think this circuit has taken the  
9 position those kind of payments get prorated. It's

10 not before the Court today. But we --

11 THE COURT: I was about to make that  
12 point to you.

13 MR. GOLDMAN: Thank you, Your Honor.

14 Again, what it boils down to, we were  
15 seeking some meat on the bones of the statement that  
16 they made that they will continue to perform in a  
17 timely manner. They are undisputed postpetition date  
18 obligations. We wanted to clarify what undisputed  
19 meant. We want to clarify what would happen if one  
20 of these Debtors, or all three of them, turned out to  
21 be administratively insolvent. Because they are  
22 special purpose entities, these are not the same as a  
23 general operating company, what we want to clarify  
24 that timely meant timely. Instead I think the  
25 response leaves us even more nervous than the motion

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2 did. We reiterate our request that they have to  
3 clarify that it's appropriate for them to have to  
4 clarify that when they seek this Court's  
5 discretionary extension.

6 Thank you, Your Honor.

7 MR. FOSTER: Wilbur Foster of Milbank,  
8 Tweed on behalf of the Rockgen, South Point and Broad  
9 River owner-leassors. And I am not going to get that  
10 right. But there I go. We filed an --

11 THE COURT: I don't know if you have got  
12 it right. It seems to be an inverse order from what  
13 I have.

14 MR. FOSTER: Please do not confuse me,

15 Judge. It has taken me a while.

16 On behalf of those entities that I filed  
17 a limited objection to the extension motion. The  
18 objection was limited to the extension motion as it  
19 applied to the three - I will call them - Debtor  
20 lessees, of those lessees of those lessors to those  
21 Debtor lessees. I had just to follow Mr. Goldman's  
22 remarks by pointing out three categories of items.

23 First, point one, the Debtors say they  
24 have not had sufficient time to evaluate these  
25 leases. They point to the numerous nonresidential

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2 real property leases they have to look at. But these  
3 are facilities, these are facility leases, plant  
4 leases, a very special subset of all the leases they  
5 have to evaluate. And indeed, in the Cash Collateral  
6 Order that was entered by this Court on January 30,  
7 the Debtors agreed to a special and accelerated  
8 review process with regard to those plants. These  
9 plants generally, including these, and that would  
10 include these particular leases, and that was a  
11 process under that Order would be completing just  
12 about now under the deadline that they agreed to. So  
13 it's not unreasonable to suggest or to conclude that  
14 they should have been able to evaluate these  
15 particular leases during that period. Again, it is a  
16 very limited subset of plant leases for these  
17 particular plants.

18 Second, the Debtors have contended, and  
19 there is a principal contention, that the disposition

20 of these project leases is critical to a Plan of  
21 Reorganization for the Debtors' lessees. And indeed,  
22 on page 10 of the response they filed yesterday they  
23 have stated, and I quote, "Any assumption or  
24 rejection of the project leases will necessarily need  
25 to be contemplated as part of a Plan of

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2 Reorganization for such Debtor lessees." That  
3 argument is undercut by the fact that although they  
4 are seeking the statutorily permitted extension to  
5 July 18 with respect to these leases, they are also  
6 seeking an extension until December 31 of this year  
7 to file a Plan of Reorganization as to these Debtor  
8 lessees. So that argument that this is essential to  
9 their plan is undercut by the fact they are not  
10 filing a plan any time around July 18 to these Debtor  
11 lessees. In fact, filing it almost six months later  
12 if they get the relief they are seeking.

13 Third, the Debtors make the point that  
14 they don't have to provide adequate assurance of rent  
15 payments in order to get a Section 365(d)(3)  
16 extension, pointing out that adequate assurance of  
17 future performance is a requirement for assumption.  
18 We don't dispute that. But the cases they cite do  
19 support the proposition that whether the Debtors are  
20 making the payments required under the leases and is  
21 required now under Section 365(d)(3), that is a  
22 factor to be considered in determining whether and  
23 how much of an extension the Debtors should get.  
24 Indeed, the Debtors themselves point to these

25 payments as a reason for granting the motion.

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2 As Mr. Goldman pointed out on page 7 of  
3 their motion, they say the lessors under the  
4 unexpired leases ".... will not be prejudiced by the  
5 extension of time requested by the Debtors because  
6 the Debtors have performed and continue to perform in  
7 a timely manner the undisputed postpetition date  
8 obligations under expired leases." By their own  
9 judicial admission, that is a relevant factor in  
10 determining whether they should get an extension.

11 Fourth, they say there is no prejudice  
12 to our own lessees by it being granted an extension.  
13 As we point out in our response, the sooner this gets  
14 resolved the better. If they decide later to reject,  
15 particularly the closer to the summer they get to  
16 reject, that raises issues in terms of taking over  
17 the plant, getting regulatory approvals and the like  
18 as we move into the peak power season.

19 Second, they undercut their own argument  
20 by the lack of prejudice by basically saying that  
21 they can refuse to make the payment on the 29th,  
22 having said in their motion there is no prejudice  
23 because they will make it in a timely manner. They  
24 say they can refuse to make the payment coming due on  
25 May 30. So they admitted that getting payment is

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2 something to be determined. They have come out and  
3 declared they may not make the payment on May 29. If  
4 they get the extension and don't make that payment on  
5 May 29, they would have obtained a free six-week  
6 extension of the period, and that is just not  
7 appropriate. There is a need to have a better  
8 showing of cause than that.

9 If they are going to get the extension,  
10 we would ask in the alternative that they be directed  
11 not just to have a commitment to make a payment and  
12 not a commitment to make undisputed payments, a word  
13 that is not in Section 365(d)(3), they can amend that  
14 statute by motion, they should be directed to make  
15 the payments that come due under these leases on May  
16 30 and to avoid their getting a free option. The  
17 Order should provide this. If they don't make those  
18 payments, then the owner-lessors have stay relief to  
19 take appropriate action to enforce their rights under  
20 the leases.

21 So in sum, we dispute their assertions  
22 about cause being shown here, number one. Number  
23 two, if they are given an extension, it has to be an  
24 extension with teeth; they have either to commit to  
25 being required to do what they promised in their

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2 motion. If they don't, they have to pay a potential  
3 price for it.

4 MR. CANTOR: Your Honor, if I may  
5 respond briefly in reverse order.

6 Picking up on the notion of

7 undercutting. What we see in the objectors' papers  
8 is a pleading that there will be some prejudice if  
9 the leases are terminated and turned back. It will  
10 require a certain amount of the time during the  
11 process of turn-back to give the owner-lessees time  
12 to arrange for somebody to manage the projects, seek  
13 whatever regulatory approvals are necessary. So this  
14 is not the kind of thing where a lease can be  
15 terminated, keys thrown back that easy without  
16 prejudice to the owner-lessors. In fact, I think  
17 they would be unhappy if we didn't get an extension  
18 and suddenly terminate on May 18. I don't think they  
19 will get an operator in by summer.

20               So I actually think the Debtors will be  
21 prejudiced as a consequence, their constituents will  
22 be prejudiced if we don't get an extension of time,  
23 if it turns back the three pack. I mean, these are  
24 very complicated discussions among primarily the  
25 unsecured committee and the second lienholders about

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2 one of the first group of projects that we should be  
3 turning back. Yes, I know the timetable suggests we  
4 should be done by now. But the process will take  
5 some more time to build consensus. Even if that were  
6 to occur, a fair amount of time is required to give  
7 these back. So it will not cause the prejudice that  
8 Mr. Foster laid out in his papers.

9               With respect to the adequate assurance  
10 of future performance, Mr. Goldman cited to  
11 prejudice. We need to cite to Burger Boys the notion

12 that there is no obligation to give adequate  
13 assurance that we are going to make a payment in the  
14 future to get an extension. Whatever rights that  
15 these folks have at the time we turn back the leases,  
16 whatever rights they have on May 30, they have those  
17 rights. Our obligation to perform are set forth in  
18 the Code. We will comply with what the Code  
19 suggests.

20 As Your Honor observed, that issue of  
21 what that means is not before Your Honor right now  
22 and is not an issue with respect to the three factors  
23 the law suggests we should consider in whether or not  
24 an extension is appropriate. I think given all the  
25 facts and circumstances here, this is a very complex

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2 case. It's to suggest that there are multi-party  
3 negotiations to make any step here is an  
4 understatement, which makes it that more complex.  
5 And I would, Your Honor, respectfully request the  
6 extension we requested.

7 I would like to say one thing here so  
8 that I might have been a little imprecise with the  
9 stipulation on the record with Mr. Wofford, and I  
10 want to make it crystal clear, because I have gone  
11 back and reviewed the exhibits to our Orders, and I  
12 noticed the Tiverton project is on there. As I am  
13 given to understand from reviewing an e-mail that I  
14 had, that there are some leases that are not subject  
15 to the rejection notice where we are the lessee,  
16 where we are likely to get an extension of time to

17 determine what to do with those leases. But as those  
18 relates to those leases for which we filed a  
19 rejection notice, we are not seeking an extension.  
20 But as I was given to understand, there may be some  
21 leases for the Tiverton and Rumford projects, that we  
22 will be requesting an extension. I will meet with  
23 Mr. Wofford, speak to him, and see if he has an issue  
24 with that.

25 MR. WOFFORD: Again, that is precisely

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2 the sort of thing we had been speaking of. We do not  
3 know of any other real property leases with respect  
4 to which the Debtors are lessees to these  
5 partnerships. If the Debtors are planing that they  
6 are given the economic decision that has been made  
7 after consultation with the committee of the ultimate  
8 fate of those projects, we believe the motion should  
9 not be granted. Again, we don't know that any such  
10 leases exists. And certainly the initial response  
11 that was filed implies that, in fact, no such leases  
12 do exist.

13 MR. CANTOR: Your Honor, this is clearly  
14 something we want to be crystal clear on. If there  
15 aren't some leases there, that is not part of the  
16 rejection package. We don't want to prejudice  
17 ourselves by losing it now. I would commit to get to  
18 Mr. Wofford and his clients about any of those  
19 leases, to the extent there are any. But I did not  
20 want to agree to some broad brush stipulation that  
21 might give some intended prejudice.

22 THE COURT: It's your stipulation. You  
23 can stand up to clarify at this point.

24 MR. WOFFORD: Your Honor, I would  
25 propose there is, to the extent there are leases, and

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2 we have deadlines that is coming before the next  
3 omnibus hearing that is not going to be worked out at  
4 the end of the day. Perhaps an interim extension, to  
5 the extent there are any such leases, to the 26th, to  
6 give the parties an opportunity to resolve the issue  
7 to see if they have a dispute is warranted might be  
8 appropriate.

9 THE COURT: I can approve an Order  
10 today. And you can amend the schedules based on this  
11 record.

12 MR. CANTOR: Thank you, Your Honor.

13 THE COURT: Does anyone else want to be  
14 heard?

15 MR. GOLDMAN: May I briefly respond?

16 THE COURT: I would like to hear from  
17 those parties that had asserted some interest in the  
18 three pack leases, for example, the Creditors'  
19 Committee.

20 MR. DUBLIN: Philip Dublin for the  
21 committee.

22 As to what the parties have spoken about  
23 today, there was a list and time line set forth in  
24 the Cash Collateral Order when the Debtors'  
25 Creditors' Committee and the second lienholders, I

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2 believe, with obvious rights of the first lienholders  
3 would be discussing a number of projects that the  
4 Debtors have and what should be the appropriate  
5 utilization of those projects going forward, whether  
6 or not the estates should continue to fund projects  
7 on an ongoing basis pertaining to do that, certain  
8 projects, the group has determined that it will  
9 likely be turning back. We are continuing to  
10 negotiate with all parties to see if we can maximize  
11 the properties, to key them into the estate or  
12 maximize them at the recovery to the constituencies  
13 and all the relevant Debtors, and guarantees that  
14 flow from Calpine Corporation down to the  
15 subsidiaries out to people, we are continuing to  
16 analyze that. I think in connection with the  
17 exclusivity extension motion, these are very  
18 complicated issues that require a lot of hard work  
19 and difficult analysis in trying to deal with energy  
20 curves and other issues that are outside the realm of  
21 bankruptcy law, we believe the extensions are  
22 appropriate to deal with all of those issues in an  
23 ongoing basis.

24 MR. LEVINE: Steven Levine, counsel to  
25 Law Debenture, a lien Trustee.

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2 We support the extension. We simply

3 state these are complex projects. The extension will  
4 reserve all of the value for everybody. I think  
5 laboring behind what the various proponents on this  
6 side of the room are asking for is a determination of  
7 the adequate assurances is a notion that they really  
8 want their deal, the deal they struck prepetition to  
9 be improved in the sense that they want somebody  
10 other than the particular special purpose Debtors  
11 that they expressly bargained for. It asks the  
12 obligors to guarantee the lease payments due at the  
13 end of the day, and that is not the deal they struck.  
14 So for all of those reasons, we think it's essential  
15 that we preserve value for the entire estate, that  
16 this extension be granted.

17 Thank you.

18 MR. GOLDMAN: Just briefly, Your Honor.

19 First of all, I was glad that Mr. Cantor  
20 indicated that you can't just turn back these deals  
21 on a one-day's notice. That is exactly what they  
22 tried to do in Rumford and Tiverton, and it caused a  
23 lot of heartburn to U.S. Bank and continued to cause  
24 a lot of heartburn for us. If that is not going to  
25 repeat itself, that is very good.

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2 Secondly, with respect to the comment  
3 that was just made, "this is the deal we struck."  
4 The deal we struck has a Calpine Corporation  
5 guarantee. So it would be appropriate to clarify  
6 that issue, whether the statement, that they will  
7 continue to meet their obligations includes the

8 obligation of Calpine Corporation to guarantee that  
9 these payments are made if there is an  
10 administratively insolvent special purpose entity.  
11 So it may not have been clear that Calpine  
12 Corporation had guaranteed these payments. But they  
13 have on a prepetition basis.

14 And finally, I just believe, and I think  
15 for reasons that Mr. Foster has cited, that rather  
16 than have this be a two-step process, where the  
17 extension is granted regardless of any testing on the  
18 ability of the Debtors to, in fact, continue to meet  
19 its obligations and then come back in forty-five days  
20 and have a free-for-all is not as rational as using  
21 the opportunity where they are coming and asking the  
22 Court's discretion to give them something that is not  
23 automatically provided to test whether, in fact, they  
24 have good faith and the ability to perform their  
25 ongoing obligations that is required under 365(d)(3).

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2 THE COURT: Thank you.  
3 Well, it's clear to the Court that there  
4 is more than adequate grounds to grant the  
5 application to the extent and form requested by the  
6 Debtors, supported by the Creditors' Committee and  
7 others. This case is still in its triage stage.  
8 It's a regulated industry. There are pending issues  
9 in the 2d Circuit which may have some impact, some  
10 very strong impact on how many of these matters have  
11 to be handled. There are economic issues which have  
12 to play out based on the timing of those issues. May



13 30 is one of those times.

14 It is clear that in making the  
15 evaluation as to assumption and rejection there is  
16 more than just the Debtors making their evaluation.  
17 It is the universe of Calpine that is involved, and  
18 have to be involved. While it may have been thought,  
19 with an untoward assumption, that the determination  
20 on assumption and rejection would pretty well be made  
21 by this time, or close to this time, it's clear  
22 that's not necessarily the case.

23 The request, accordingly, is granted.  
24 The objections are overruled. I will enter an Order.

25 MR. CANTOR: Thank you, Your Honor.

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2 THE COURT: I have signed the Order.

3 MR. CANTOR: Thank you, Judge.

4 The next motion is the Debtors' motion  
5 to request an extension of the exclusive periods  
6 within which to propose acceptance to a plan. Mr.  
7 Sassower of my office is handling that motion.

8 MR. SASSOWER: Good morning, Edward  
9 Sassower of Kirkland & Ellis, counsel to the Debtors.

10 Your Honor, by this motion the Debtors  
11 hereby seek to extend the exclusive period in which  
12 the Debtors may file a Plan of Reorganization from  
13 April 20, 2006 through December 31, 2006 and the  
14 exclusive period during which the Debtors may solicit  
15 acceptances of such plan through January 20, 2006  
16 through March 31, 2006.

17 Your Honor, in the motion the Debtors

18 describe how they have satisfied the various factors  
19 that Courts commonly consider in evaluating whether  
20 Debtors have established cause to extend exclusivity.  
21 The bottom line is that the Debtors have accomplished  
22 a great deal in a short time they had been in  
23 bankruptcy. But there is still a great deal more to  
24 accomplish.

25 As Mr. Cantor noted in his presentation,

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2 these cases are complex and large by any standard.  
3 As Mr. Cantor noted, there are over 270 Debtors,  
4 there are also over ninety plants spread throughout  
5 twenty-three states and four countries, more than \$18  
6 billion of debt spread among secured and unsecured  
7 projects and parent level financing there are  
8 thousands of contracts and leases and creditors. And  
9 as Mr. Cantor noted, there is a litigation that is  
10 pending before the 2d Circuit. As a result of the  
11 size and complexity, the Debtors require substantial  
12 time in which to formulate and file a Plan of  
13 Reorganization.

14 Your Honor, as Mr. Cantor noted, the  
15 Debtors currently are focused on designated projects,  
16 process, and asset sale process. Once we have  
17 identified the first group of underperforming  
18 projects, and a second group is coming soon once we  
19 have identified them. That was the first step. Then  
20 we have to figure out whether we want to sell them or  
21 mothball them or abandon them or restructure them.

22 And as Mr. Cantor noted, that is not

23 just the Debtors who are making that exercise, it's  
24 also that we have got to go through the present  
25 committees that we are working with. Then there are

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2 a dozen or so additional assets that the Debtors are  
3 focused on selling. Once we have dealt with the  
4 designated projects, and once we have dealt with  
5 those negotiations or some additional projects we  
6 would like to sell, then at that point the Debtors  
7 can begin to focus on what are the remaining assets  
8 so that we can then form a Plan of Reorganization.

9 We are also dealing with the threshold  
10 issue of the litigation pending before the 2d  
11 Circuit. And once we have got a better sense of how  
12 we will be able to reject power supply contracts,  
13 that is going to enable us to better assess what this  
14 company should look like when it emerges from Chapter  
15 11.

16 Your Honor, there have been two limited  
17 objections that have been filed and one statement.  
18 The first limited objection was filed by a vendor on  
19 behalf of the first lienholders. The first argument  
20 was that a 255-day extension sought by the Debtors is  
21 longer than the initial extension of exclusivity that  
22 are granted in other large Chapter 11 cases, and  
23 therefore the proposed extension should be reduced to  
24 one hundred-eighty days.

25 Your Honor, we have looked at these

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2 cases cited by the first lienholders and argue that  
3 our proposed extension is not too long, but rather  
4 the initial extensions granted in some of those other  
5 cases was too short. The cases they cite are Enron,  
6 Marent, Aldephia, World Com, Delfi, Lorrall, and RG  
7 and Global Crossing. In Enron it is true the initial  
8 extension of exclusivity was only one hundred-eighty  
9 days. But what happened next? There were five  
10 additional extensions of exclusivity and three  
11 additional extensions of the solicitation period, and  
12 the case took 957 days. In Marent, there was a  
13 similar pattern. There was a 171-day initial  
14 extension of exclusivity, but then there were three  
15 additional extensions after that in the case that  
16 took 880 days. The same pattern was reflected in  
17 most of these cases. There were a few exceptions.  
18 In RG There was a renegotiated plan. Delphi, of  
19 course, just filed, so that case has just begun.

20 Your Honor, exclusivity motions costs a  
21 lot of money. Thus, as long as they are warranted  
22 longer extensions of exclusivity, which should result  
23 in fewer exclusivity motions, fewer exclusivity  
24 motions over the life of the estate should save the  
25 estates money. Here, the proposed extension is

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2 clearly warranted. The earliest the Debtors would  
3 put a plan on file would be by the end of the year.  
4 From their papers, not even the first lienholders are

5 arguing otherwise. Having said that, even if we get  
6 this relief for a long extension of exclusivity, we  
7 may be back here at the end of the year asking for a  
8 second extension of exclusivity.

9           There are two the things I would like to  
10 note with respect to this objection. Pursuant to the  
11 request of the second lienholders, the Debtors have  
12 revived a proposed Order which now explicitly  
13 provides that it's without prejudice to any parties'  
14 in interest right to seek to reduce or terminate  
15 exclusive periods for cause in accordance with  
16 Section 1121(d) of the Bankruptcy Code. Therefore,  
17 if, in fact, the facts, as we go forward in time,  
18 indicate that this proposed extension was too long,  
19 the first lienholders always have the right to come  
20 back here to seek to terminate the exclusivity or to  
21 shorten it.

22           Lastly, the length of this proposed  
23 initial extension of exclusivity has been negotiated  
24 with and approved by the Official Committee of  
25 Unsecured Creditors and the Ad Hoc Second

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2 Lienholders. Your Honor, U.S. Bank also filed a  
3 limited objection to exclusivity. Many of these  
4 backup with the last motion are repeated here.

5           As Mr. Cantor noted, this is in some  
6 ways a replay of the DIP hearing. They argue that  
7 the exclusivity periods for solely the Rumford and  
8 Tiverton estates should be terminated because the  
9 Debtors have filed these notices to reject these

10 certain leases. The Debtors argued at the DIP  
11 hearing, and as Mr. Cantor just argued a moment ago,  
12 the Debtors view and conduct themselves as an  
13 integrated enterprise. There may come a time when  
14 they have individual plans for individual Debtors,  
15 but that time is not here. It's not now. This case  
16 would not be manageable at this point if we had 273  
17 individually tailored exclusivity periods.

18 I have two other points worth noting.  
19 While the Debtors filed a notice of rejection,  
20 nothing has been rejected as of yet. Even if that  
21 notice of rejection were to become effective, there  
22 would still be other matters that these estates would  
23 have to deal with. There are leases, there is land,  
24 interconnecting facilities, buildings, gas supply  
25 contracts, et cetera.

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2 Lastly, Arcadia filed a statement, it's  
3 not an objection, they don't object to the relief  
4 sought, but take issue with the following statement  
5 that the Debtors have "sufficient liquidity to pay,  
6 and are paying their postpetition bills as they come  
7 due." Arcadia argues the statement is inconsistent.  
8 The Debtors do not have Arcadia's invoices. At best  
9 this argument is hypertechnical as though the Debtors  
10 have not paid those monies. These invoices are  
11 subject to litigation, which will be in play in a few  
12 weeks, on April 26. If the Court determines at that  
13 time that the Debtors should have paid Arcadia those  
14 invoices, then the Debtors will deal with it to fully

15 pay those invoices.

16 With that I will yield the podium to the  
17 objectors.

18 MR. LEVINE: Good morning. Steven  
19 Levine, again, for the Law Debenture first lien  
20 Trustee.

21 Mr. Sassower quite correctly  
22 characterized our objection as a limited one. The  
23 first lien Trustee is not opposed to the concept of  
24 the extension, it is opposed to the length. In his  
25 presentation Mr. Sassower conceded that the extension

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2 that they are seeking has surpassed and was  
3 unprecedented with any of the other complex cases  
4 that we cite in our objection, most of which are the  
5 cases that they cited in their motion for extension  
6 of exclusivity. None of them had an initial  
7 extension beyond one hundred-eighty days. Several of  
8 them had extensions that were one hundred days. I  
9 will submit that substantially all of these cases  
10 were decided prior to the 2005 Code amendments that  
11 limit the ultimate period of time in which the  
12 Debtor's rights can be extended, solicitation rights.  
13 Those limitations evince a policy judgment of  
14 Congress. Extensions should be viewed very carefully  
15 and granted judicially. I am not saying these  
16 extensions go beyond what Congress permits. But  
17 obviously they don't. We believe that the Debtors  
18 should have the burden to come back to Court at an  
19 appropriate juncture and demonstrate that they are

20 continuing to make progress towards a plan and  
21 working constructively.

22 The suggestion that the second  
23 lienholders said that any party in interest has the  
24 ability to come back in and seek to terminate  
25 exclusivity is a constructive one, but kind of

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2 reverses that burden. So we would respectfully  
3 request that the Court, one, grant the extension, but  
4 limit it to no more than one hundred-eighty days, as  
5 has been the limit in every other complex case in  
6 this district.

7 Thank you.

8 MR. WOFFORD: Your Honor, I suppose I  
9 will start on behalf of U.S. Bank. The Tiverton and  
10 Rumford projects are, obviously, not in very  
11 different circumstances than the rest of the Debtors'  
12 generating facilities. I think we agree with the  
13 Debtors with respect Tiverton-Rumford on one, that  
14 Mr. Sassower said there should be one hearing on the  
15 extension of exclusivity, and should be today, and  
16 should be denied with respect to these Debtors.

17 It's very, very clear where the Debtors  
18 come with respect to the Tiverton and Rumford  
19 projects. They filed rejection notices. They cut  
20 off funding from the DIP facility by designation as a  
21 designated project. They have made repeated  
22 statements to the media disclaiming any obligation of  
23 taxes. They made clear that they do not want to have  
24 any regulatory burdens of the facility. So at this



25 point the question is what is the point of granting

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2 exclusivity? Well, the Debtors have said that, in  
3 fact, there are ancillary assets. We would submit  
4 those assets are precisely that ancillary and that  
5 any realistic hand over of the plant is going to  
6 involve hand over of things like, or at least access  
7 to interconnection lines. The notion you are giving  
8 back a power plant but not giving back the wire that  
9 attaches to the grid or continuation pursuant to a  
10 Plan of Reorganization because of a bunch of wire  
11 that attaches to the grid or ancillary buildings, et  
12 cetera, doesn't seem to make a lot of sense.

13           There is simply nothing these Debtors,  
14 we believe, can reorganize around, Your Honor. And  
15 the original purpose of such an extension would be to  
16 continually drag what are going to become schemes  
17 into the continued drama of the larger Calpine  
18 reorganization. Certainly, we are not saying that  
19 there should be 270 separate plan proposals going,  
20 Your Honor, but there has been no cause shown under  
21 the McClain factor to show the Debtors haven't shown  
22 there is complexity with respect to these Debtors.  
23 They haven't shown extension is to preserve the  
24 dominant creditor of these entities. The Debtors  
25 have not shown they had been currently paying their

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2 bills. In fact, they disclaim any responsibility to  
3 do so, and have not paid the administrative claims  
4 outstanding since January.

5 Finally, they have said that they  
6 haven't been able to prove there is an unresolved  
7 contingency that is significant. Under the McClain  
8 factor, they can't satisfy any of them; yet, they  
9 still say they are justified to an extension. We  
10 disagree and desire the motion be denied as to  
11 Tiverton and Rumford and the related Debtors.

12 MR. SMOLEV: Richard Smolev of Kaye  
13 Scholer. If I can have a moment to follow on Mr.  
14 Wofford. By way of orientation, I represent Philip  
15 Morris. The question in Tiverton and Rumford, when  
16 Calpine is saying someone is liable for taxes, they  
17 are saying we are liable for taxes, which caused an  
18 enormous bitterness between us. I have a suggestion  
19 how to deal with Tiverton and Rumford. We have a  
20 hearing on April 26 on the Debtors' motion to reject  
21 certain leases with respect to Tiverton and Rumford.  
22 You will hear a great deal at that hearing beyond  
23 what we are talking about.

24 It was interesting that Mr. Cantor said  
25 that the Debtors simply shouldn't throw the keys

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2 away. You will hear on the 26th, for example, that  
3 they shut down those plants on a weekend. At 2:00,  
4 on Monday, sent me 121 pages worth of documents and  
5 said by 4:00 o'clock on that Monday I had to react to

6     them or else they are walking away from the plant.  
7     So the Debtors have done some things that destroy  
8     value. I think, perhaps, you should consider  
9     Tiverton and Rumford and the exclusivity on Tiverton  
10    and Rumford in the context of all the questions you  
11    will hear on the 26th.

12                 In the case of Tiverton and Rumford we  
13    have a Bridge Order taking exclusivity to the 26th.  
14    I don't think anyone will file a plan. I agree, Mr.  
15    Sassower, you will not allow a designer plan on every  
16    single project case. But I think we have to carve  
17    Tiverton and Rumford out of whatever global Order is  
18    entered and let that proceed on its own path. There  
19    are myriad issues surrounding those two facilities.

20                 Thank you.

21                 MR. KORNBERG: Alan Kornberg of Paul,  
22    Weiss for the Unofficial Committee of Second lien  
23    debtholders.

24                 Your Honor, it was a close call when our  
25    committee was going to object to this extension of

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2    exclusivity. As Mr. Sassower related to the Court  
3    earlier, we might not object in return for the  
4    modification of the Order that Mr. Sassower described  
5    to Your Honor.

6                 I just want to make a very clear point,  
7    and that is as we heard from Mr. Cantor and others  
8    today, there are some very essential critical  
9    benchmarks that have to be achieved by these Debtors.  
10   We would like to have seen them embodied in an

11 Exclusivity Order granting the requested extension,  
12 but the Debtors declined to agree to that. But I  
13 think everyone would agree that this company has to  
14 finally come to some conclusion as to which projects  
15 it's going to keep and which projects it won't keep.  
16 We really need to see and I think the other  
17 constituencies need to thread through project by  
18 project's financial statements, we also need to see  
19 more data and more analysis concerning the visibility  
20 of CES, the energy trading subsidiary. Those are  
21 absolutely critical items that we need to see. It is  
22 not going to take six or eight months for the Debtors  
23 to address those issues. I am rising only to say  
24 those are things that we will be pressing for. If  
25 those deliverables are not made available in the

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2 short order, we may be back and we may be taking  
3 advantage of the modification to the Order that Mr.  
4 Sassower described, seeking to terminate exclusivity.  
5           We, for example, pressed the Debtors to  
6 deliver a business plan by May 31. We were told that  
7 was absolutely impossible. And yet, I noted that in  
8 the motion that we will come back to Court shortly to  
9 establish an executive incentive plan. If they have  
10 delivery of a business plan by June 1 as one of the  
11 incentive factors, that may be considered. So I  
12 think our committee and our financial advisors feel  
13 that these goals are attainable in short term. We  
14 will be pressing the Debtors to deliver them. And if  
15 we don't get them, you may be hearing from us again.

16 MR. DUBLIN: Your Honor, Philip Dublin  
17 on behalf of the committee.

18 I think what everybody is saying so far  
19 is that there are a lot of complex issues in this  
20 case that has to be dealt with, and extension of  
21 exclusivity is most definitely warranted.

22 With respect to the Rumford and Tiverton  
23 creditors, I think they are losing sight of the fact  
24 that while they have interest in the project, there  
25 are other creditors, all those creditors that have

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2 substantial intercompany claims in connection with  
3 this integrated, complex structure that Calpine has  
4 created over the years, that's going to have to be  
5 addressed and numerous parties will have to be  
6 involved in addressing those issues, potentially  
7 including Your Honor at the some point.

8 Mr. Kornberg, I think, got a provision  
9 added to the Order which requires any party has a  
10 right to seek to terminate the exclusivity periods to  
11 the extent they don't think they should go in the  
12 right direction. The committee is heavily involved  
13 with the Debtors in negotiating this. There is a  
14 substantial operational restructuring. It is not  
15 like some of the other cases where there was a first  
16 lien negotiation, there was a pre-negotiation or  
17 might have been some issues of fraud, and it was  
18 clarifying those issues as opposed to fixing the  
19 operations that were also involved.

20 We think it's probably likely the

21 Debtors are going to be before you again, probably  
22 around Thanksgiving time filing a motion to extend  
23 its exclusive periods. It would not be surprising,  
24 based on the management of these cases, that the  
25 Debtors, as well as the committee, would have an

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2 obligation to maximize the value of this enterprise  
3 for the Debtors, for everybody, the committee and  
4 creditors as the fiduciaries for those parties. We  
5 believe this extension is most appropriate and should  
6 be granted.

7 MR. SASSOWER: Your Honor, I would  
8 respond to some of the objections.

9 With respect to Law Debenture, I will  
10 argue that the new Bankruptcy Code's amendments cut  
11 the other way. Under the old Bankruptcy Code I know  
12 there was maybe a rationale for having short  
13 extensions of exclusivity by means of keeping the  
14 Debtor's feet to the fire. Because of the new  
15 Bankruptcy Code amendments where there is a hard stop  
16 on eighteen months of the exclusivity, our feet is  
17 already to the fire. We are racing as fast as we can  
18 in this case, because we are so cognizant of that  
19 weight.

20 THE COURT: I am aware of all of this.  
21 Do you have anything else in response?

22 MR. DUBLIN: Let me qualify a few  
23 comments. The June 1 date mentioned by Mr. Kornberg,  
24 the benchmark that he mentioned, I don't believe that  
25 is necessarily correct. But the compensation motion

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2 hasn't been filed. When we file it we will see what  
3 it says. As far as Mr. Smolev's compromise of the  
4 June 26 hearing, I want to remind the Court the  
5 rejection will become effective, but on the 18th that  
6 will have the big impact on the hearing on the 26th.

7 That is all, Your Honor. Thank you.

8 THE COURT: Thank you all.

9 I am well aware that there are some  
10 highly complex issues that have to be resolved, some  
11 can be done here in the pit, and many other issues  
12 will be resolved outside of this Court's penumbra.  
13 But nevertheless, there does seem to be a need for a  
14 fair amount of the time. The backstop of eighteen  
15 months put in by Congress does change the picture  
16 somewhat, and even brings it back to an early case, I  
17 can't remember the name, I can only remember the  
18 district, it's the Northern District of Florida  
19 where, I think it was a large hotel case, where it  
20 was sometime in 1980 or '81 where the presiding Judge  
21 looked around and saw all of these constant requests  
22 for extensions of exclusivity and said, "Come on.  
23 Let's get real. It's a waste of time to keep coming  
24 back here. We all have better things to do. Let's  
25 look and see what a logical amount of time should

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2 be." And I think he extended it out four times, more

3 than what the Debtor had actually asked for. The  
4 Judge is now retired. But the concept is there. And  
5 Congress has now put a backstop here.

6 Realistically, I expect, if I yield to  
7 the request of 180 days or 120 days, you will be back  
8 and you will be charging the estate your very nice  
9 fees for these extra extensions. And I think this is  
10 a party that we do not need to have too frequently.  
11 The case is highly complex. The solutions with  
12 respect to the operating fix that has to be put into  
13 place, and clearly it's an operating fix, that has to  
14 be put into place, perhaps in this case a little bit  
15 more than an economic fix that you usually find that  
16 drives the case.

17 Accordingly, the calculus of time to  
18 December 31 under these circumstances, I do find is  
19 appropriate. And notwithstanding the fact that  
20 appended to the language of this Order is the legend  
21 that "Upon application for cause any party in  
22 interest can come in and shorten the time." I don't  
23 know why that is to be in an Order. It is built into  
24 the Code. It is built into the operation of Title 11  
25 for cause where anybody can come in at any time and

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2 seek relief. And that goes as well to the Tiverton  
3 and Rumford people. They may be here on a shorter  
4 timetable than anybody else. I don't know. But  
5 under all of the circumstances here, the application  
6 for this particular case at this particular time is  
7 appropriately gauged to the end of this year.



8 MR. SASSOWER: Thank you, Your Honor.

9 May I approach?

10 THE COURT: Yes.

11 MR. SASSOWER: (Hanging.)

12 THE COURT: Of course, the objections  
13 are overruled. I have signed the Order.

14 MR. CANTOR: Your Honor, the next motion  
15 is a motion of the Gas Transmission Northwest  
16 Corporation to compel performance under the  
17 stipulation. I will let them press with their  
18 motion. My colleague, Mr. Ross Kwasteniet, is going  
19 to be handling the response.

20 MR. ELROD: Good morning. I am David  
21 Elrod on behalf of Gas Transmission Northwest  
22 Corporation, Portland Natural Gas Transmission System  
23 and Transcanada Pipelines Limited.

24 We filed a motion to enforce a  
25 stipulation, which we read into the record on January

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2 18, 2006 before the Court. On that date the Debtors  
3 had set a motion, utility motion, and we entered into  
4 an agreement with counsel for the Debtors, which Mr.  
5 Burns read into the record and the Court accepted  
6 concerning, in part, those three pipelines I just  
7 referred to.

8 The stipulation required that the  
9 pipelines would not be treated as utilities for the  
10 purposes of Section 366 in this case and also said  
11 the pipelines may draw down on the postpetition  
12 assurances they held to save their prepetition debt.

13 And all the pipelines have collateral. And the  
14 Debtors and the pipelines agreed that they could go  
15 ahead and lift the stay and draw down on that  
16 collateral for prepetition debt. Also it was agreed  
17 that the Debtors would replenish the collateral to  
18 the extent that the pipelines drew down for the  
19 prepetition amount owed. We also agreed that to the  
20 extent there was a letter rejection, the pipelines  
21 would be permitted to use their prepetition  
22 collateral to offset the rejection damages.

23 Now, since that date we have traded  
24 proposed Orders, traded letters, and traded various  
25 communications to try to get an Order entered to

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2 reflect the stipulation. The reason why an Order is  
3 not necessary is because there has been at least one  
4 escrow agent holding the prepetition collateral who  
5 has refused to relinquish that collateral without an  
6 Order entered by the Court. And they have taken the  
7 position that they have to have a formal Order  
8 lifting the stay to permit draw down on prepetition  
9 collateral, although we have a stipulation.

10 Now, at the time we filed our motion to  
11 enforce, Your Honor, none of the replenishment had  
12 occurred. Since that time I have found out through  
13 communications that were received yesterday that the  
14 Debtors filed its objection that the Debtors have and  
15 does intend to replenish collateral on some of the  
16 pipeline contracts. As this Court --

17 THE COURT: And you want them all.

18 MR. ELROD: Yes, Your Honor. That was  
19 the stipulation.

20 The bottom line on that date, as the  
21 Court will remember, it said it sounds to me like the  
22 Debtors are assuming under 365 these pipeline  
23 contracts, because the Court asked me, "If you are  
24 not a utility, what are you?" I said, "We are a  
25 pipeline with an executory contract." And the Court

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2 then said, "This agreement sounds like an  
3 assumption." At that point we clarified it and said  
4 it may be, but was not what our agreement is. The  
5 Debtors are going to evaluate through the course of  
6 the bankruptcy which of these contracts the Debtors  
7 wants to assume or reject.

8 At one point the Debtors did send a  
9 notice to reject the Portland Natural Gas contract,  
10 and we filed, obviously, an objection to the notice  
11 and a motion to withdraw. Because it's our position  
12 that that is governed by FERC jurisdiction, and that  
13 is tied up with the case that is currently heard  
14 before the 2nd Circuit.

15 Today, what we are asking the Court to  
16 do is hold the Debtors to the stipulation. We have  
17 cited authority to that effect in one case in  
18 particularly, the Department of Crite versus The  
19 Department of Treasury, it's 145 B.R. 1007. The  
20 Court makes it clear that "Stipulations read into the  
21 record are binding, are agreements with the Court as  
22 well as with the parties when they are absolutely

23 binding. They are binding on the attorneys in that  
24 matter. The stipulation read into the record is not  
25 only binding, because it's read into the record, it's

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2 binding on the party who read it into the record."  
3 That is the situation we have in this case, Your  
4 Honor.

5           It's disappointing, and I understand  
6 it's a very complex case, I understand the Debtors  
7 have a lot going on, there is no doubt about that.  
8 There is no doubt the Debtors have a lot of  
9 contingencies and lots of complexity it is dealing  
10 with. That is also the issue what contracts it is  
11 going to reject or assume. We understand the  
12 pipeline contracts are complicated contracts and they  
13 are currently involved in that process. We also  
14 understand that the Debtors have now made its  
15 objection, indicated that it's not going to be  
16 assuming certain contracts.

17           Now, I asked the Debtors prior to the  
18 hearing, Does that mean that was your notice of  
19 rejection? And the Debtors have agreed that does not  
20 constitute a notice. That is their statement, these  
21 are the ones they intend to reject. So, what is at  
22 dispute today is based on the stipulation that was  
23 entered back in January where the Debtors agreed to  
24 replenish the collateral when it was drawn down. The  
25 Debtors have not done that. It has just recently

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1  
2 agreed to do it as to certain contracts but not on  
3 those contracts it now contends it may reject.

4           The stipulation is clear, Your Honor.  
5 We believe it has to do with credibility. We believe  
6 it's an agreement entered into with the consent of  
7 this Court, and we believe the Debtors should be held  
8 to that agreement and replenish that collateral. It  
9 is no harm to the Debtors. If these Debtors do  
10 ultimately reject those contracts, even though it  
11 made postpetition assurances, then the Debtors are  
12 permitted, depending on how the 2d Circuit --

13           THE COURT: Ah, there is the rub. If  
14 that is the rub, either Court will permit, or this  
15 Court will permit it.

16           MR. ELROD: If, in fact, the Debtors can  
17 walk away from those contracts, and we have a claim  
18 in this case for breach of contract, then the issue  
19 becomes what happens to postpetition collateral? The  
20 Debtors are concerned, I assume. I have no idea what  
21 their concern is, is that we may try to grab on to  
22 that collateral for prepetition rejection damages.  
23 The Court is not going to permit us to do that. We  
24 don't intend to do that. We do intend to claim  
25 against that collateral if there is any postpetition

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2 claims for amounts not paid, that is the purpose of  
3 assurances. So the Debtors are not harmed to pay

4 those postpetition payments in any way because they  
5 are obligated to pay the tariff charges, reservation  
6 charges set forth in the contract the Debtors by  
7 posting postpetition collateral replenish these  
8 assurances are not at risk.

9               So the whole nature of that risk  
10 concerning this is simply something they should have  
11 considered, and they did consider in January when we  
12 entered into the stipulation, and we will withdraw  
13 our objection to the utility motion. They should now  
14 abide by that. It's not a large amount of money.  
15 The Debtors puts --

16               THE COURT: Is it more than my salary?

17               MR. ELROD: I would said so. But  
18 based --

19               THE COURT: It's a large amount of  
20 money.

21               MR. ELROD: It is based on what they  
22 posted yesterday that they intend to replenish. And  
23 there are some issues which we can work out with the  
24 Debtors concerning whether or not the exact amount  
25 has been replenished or not. Those issues we can

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2 resolve. But on those that has not, I don't believe  
3 we are talking about a significant amount of money in  
4 the scheme of this case, the Debtors should be  
5 obligated and required and ordered to abide by the  
6 stipulation.

7               Thank you, Your Honor.

8               MR. KWASTENIET: Ross Kwasteniet of

9 Kirkland & Ellis on behalf of the Debtors. I will  
10 try to make this as easy as possible.

11 Mr. Elrod and his clients notes we have  
12 posted collateral under all of our collateral with  
13 the pipelines we intend to use. If there is any  
14 dispute as to reconciliation of collateral amounts we  
15 are happy to work with the pipelines. So the sole  
16 remaining issue is whether or not the Debtors should  
17 be compelled to post adequate assurance deposits in  
18 support of these reputed contracts. These are  
19 contracts that in a normal case we would have filed a  
20 motion to reject long ago.

21 As Your Honor is well aware, there is  
22 the issue pending before the 2d Circuit, and so  
23 rejection is currently not a path that we feel we can  
24 pursue. Nonetheless, we made a business  
25 determination that there is no ongoing need for the

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2 reputed contracts. We put the pipelines on notice.  
3 We have no intention to post collateral on those  
4 pipelines. We have no intention to make future  
5 payments under those contracts and requests the  
6 pipelines to terminate performance of those  
7 contracts. Whether the Debtors are required to post  
8 collateral with respect to the reputed contracts,  
9 there are three reasons why we should not.

10 The first is the pipelines have  
11 articulated no need for the ongoing collateral. They  
12 have gone at some length of inputting the creditors,  
13 the Debtors and counsel. They spent no time in

14 arguing why on earth they need additional collateral  
15 in support of these contracts. The Debtors have made  
16 it clear that they are willing to accept service  
17 under those contracts. We don't think there is an  
18 issue with respect to ongoing payments because we  
19 will not be making any and we expressly authorized  
20 the pipelines to release the capacity.

21 Secondly, Your Honor, we believe that  
22 the pipelines had misconstrued the agreement read  
23 into the record at the adequate assurance hearing.  
24 As you are aware, the only issue before the Court  
25 that day was what would constitute adequate assurance

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2 of future performance with respect to utilities. And  
3 in this case, pipeline contracts.

4 Since the Debtors have determined that  
5 we don't need reputed contracts going forward, there  
6 could be no basis for an adequate assurance deposit.  
7 Adequate assurance by its very nature presupposes the  
8 pipelines would need to be protected against  
9 rendering services to the Debtors for which they will  
10 not be paid. We told the pipelines that they can  
11 cease performance, that we don't need the capacity  
12 going forward. They can remarket it and there is no  
13 need to holding it available to the Debtors.

14 Your Honor, the third reason why posting  
15 additional collateral is not necessary here, it is  
16 clear the remedy available to the pipelines, indeed  
17 the remedy is set out in Section 366 of the  
18 Bankruptcy Code to utility employers generally is to



19 suspend performance in the event of the non-payment.  
20 In the event there is not adequate assurance, the  
21 remedy for pipelines is to suspend performance.  
22 Now, Mr. Elrod has argued that we should  
23 go to FERC or some need to involve the Federal Energy  
24 Regulatory commission in this breach situation. We  
25 don't think that issue is before the Court. We are

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1  
2 not seeking Court approval for the breach of this  
3 contract. FERC has repeatedly held that it is not in  
4 the business of adjudicating private contract  
5 disputes, breach of contract disputes.

6 Moreover, the Natural Gas Act, which is  
7 applicable here, specifically provides that gas  
8 pipelines that does not receive the adequate  
9 assurance of future payment doesn't receive the  
10 collateral it is entitled to may suspend performance,  
11 which is precisely the situation we have here. We  
12 have simply not heard any reason why the pipelines  
13 should be entitled to what amounts to well over \$2  
14 million in additional collateral. We don't think  
15 there is any basis for it, and request the motion be  
16 denied.

17 MR. ELROD: Your Honor, very briefly.

18 What the Debtors are attempting to do  
19 now is contrary to its stipulation that is in place.  
20 The burden is on the pipelines and executory  
21 contracts to come in and say the Debtors can't reject  
22 or assume because the 2d Circuit is considering the  
23 issue of whether or not these type of contracts are

24 governed exclusively by FERC. The Debtors comes in  
25 and says, "Wait a second, we will not perform and

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2 thereby you are required to claim repudiation," and  
3 this is not a rejection or assumption in the  
4 bankruptcy case. That is simply contrary to 365 and  
5 the Debtor's obligations. The Debtors cannot come  
6 in, contrary to the statements, and repudiate  
7 contracts in bankruptcy without FERC approval. They  
8 simply cannot do that. They have to go to FERC and  
9 tell FERC they will not perform anymore and get that  
10 acquiescence.

11 Now, they also said under 366(a) when  
12 the ultimate provider doesn't receive the assurances  
13 it's entitled to just suspends performance. What is  
14 wrong with that argument? That argument was done  
15 away with on January 18 when the Debtors stood up in  
16 open Court and stipulated that the pipelines were not  
17 utilities for the purposes of 366. Now if they are  
18 attempting to go back and drag us into 366, contrary  
19 to the stipulation on the record, we will withdraw  
20 our objection. The law does not permit that on a  
21 stipulation.

22 They have also taken the position that  
23 the stipulation was tentative. I want them to show  
24 me anywhere in the record where the word tentative is  
25 utilized. It is not. There is a clear and final

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1  
2 stipulation. They said we have spent a lot of time  
3 impugning the Debtors and its counsel, Your Honor.  
4 We have not done that. We have simply pointed to the  
5 stipulation and said they should be obligated to  
6 stand by the stipulation in accordance with the case  
7 law. If anybody is impugned, it is the Debtors  
8 counsel it is their actions and not proceeding with a  
9 clear stipulation they made on the record, Your  
10 Honor.

11 Thank you.

12 THE COURT: Thank you. Does anyone else  
13 want to be heard?

14 MR. WOFFORD: Yes, Your Honor. I am the  
15 Trustee of two of the contracts in question are  
16 contracts that happen to be of Rumford Power  
17 Associates, and we have a number of concerns. Number  
18 one, as to the clarity of the stipulation, there is  
19 many references to the Debtors as a whole as opposed  
20 to Rumford in particular. And further, the Debtors  
21 are saying they want to pay nearly one million  
22 Canadian.

23 Now, under one of the reputed contracts,  
24 the Trustee feels, because it was mentioned in the  
25 footnote, it would like to have more of what is the

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2 source of those funds that is going to be a 1 million  
3 payment of Rumford, whether it's internally funded or  
4 be intercompany borrowing. It appears in the  
5 Debtors' footnote they intend a intercompany

6 borrowing, because they will refer to the bar under  
7 the designated project distinction that keeps them  
8 from moving cash down into Rumford. We don't know  
9 that the cash is necessary to be moved.

10 In any event, the Trustee wants to have  
11 more information because the plants to which these  
12 contracts are related by the Debtors own description  
13 is shut. You have two trans contracts. The plant is  
14 not operating, yet the Debtors wants to fund money  
15 into the entity that had run the plant and we don't  
16 quite know why or whether there is a benefit that  
17 would justify moving that cash down. I think there  
18 needs to be more information on that for the benefit  
19 of the Trustee, because, as you know, we are the  
20 dominant creditor of Rumford.

21 MR. KWASTENIET: A couple of responses  
22 in rebuttal.

23 With respect to Mr. Wofford's  
24 allegations, I understand it, and I have to clarify  
25 with my client. I don't have the information in

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2 front of me the reason we wanted to post collateral  
3 on the Transcanada contract. Even though it related  
4 to designated assets, we feel we may have had a  
5 signing of that contract elsewhere and certainly  
6 willing to give additional information to Mr. Wofford  
7 about that point.

8 With respect to Mr. Elrod's argument,  
9 first of all, Your Honor, the Debtors have the right  
10 to breach contracts at any point. We don't dispute

11 that the pipelines may have claims against the  
12 Debtors relates to breach of contract. Case law in  
13 this district is clear that the breach of a  
14 prepetition contract, even if the breach occurs  
15 postpetition, gives rise to only a prepetition damage  
16 claim.

17 What the pipelines are seeking by  
18 requesting additional postpetition deposits is  
19 essentially to remember to convert their breach  
20 claims into postpetition administrative expense  
21 claims notwithstanding the fact that the Debtors are  
22 on record saying these contracts provide absolutely  
23 no benefit to the estate and therefore the type of  
24 pipelines utterly failed to meet the standard in this  
25 circuit for qualifying administrative expense

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2 priority.

3 The second point I would like to make,  
4 even if Your Honor is inclined to believe that the  
5 Debtors made an unqualified promise to post  
6 collateral, which again is not our position. Our  
7 position was, and remains, the agreement for posted  
8 collateral was in the context of adequate assurance.  
9 Even if there was a technical promise to post  
10 regardless of whether we needed these contracts, the  
11 fact remains the pipelines have not articulated a  
12 reason why they will need to hold the Debtors'  
13 collateral.

14 The Debtors don't need these contracts  
15 going forward. If I was to pay over collateral

16 today, tomorrow I will file a turnover motion seeking  
17 return of the collateral, because in light of the  
18 circumstances, the pipelines would have no basis to  
19 hold that. I think that is all I have to say.

20 THE COURT: Does anyone else want to be  
21 heard?

22 (No response.)

23 THE COURT: I am going to deny the  
24 motion. The original stipulation was based on a  
25 concept either going in or going out of a form of

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2 adequate assurance of future performance. The  
3 collateral that is sought to be posted now is  
4 essentially that, that is collateral that would be  
5 utilized depending upon your mental reservation that  
6 would take place to be utilized for future  
7 performance. There is no performance under these  
8 contracts, no services sought, so there is no basis  
9 for the collateral to be put up under all of the  
10 circumstances.

11 It is almost at this point a parking  
12 place for utilization over some other kind of claim  
13 that may be asserted by the pipelines. But certainly  
14 it is not to be made available under the  
15 circumstances that pertain today of performance of  
16 the services, which is the intent of the underlying  
17 agreement. There are no services sought. And  
18 certainly if the Debtors did come along and sought  
19 the services, the pipelines would be fully justified

20 in refusing that, which is a remedy, whether it's a  
21 remedy under 366 or otherwise.

22 Accordingly, I am sustaining the  
23 objection and denying the motion.

24 MR. ELROD: As a point of clarity. From  
25 the one escrow agent's collateral for the prepetition

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2 date, can we get an Order lifting the stay to permit  
3 us to do that in accordance with the stipulation? I  
4 don't think the Debtors would object to that.

5 MR. KWASTENIET: We don't object to  
6 that.

7 THE COURT: Is this, in effect, to  
8 replenish where there is a service being sought?

9 MR. KWASTENIET: There --

10 THE COURT: Then that part of the  
11 application is granted. You may settle an  
12 appropriate Order.

13 MR. ELROD: Thank you, Your Honor.

14 MR. CANTOR: Just briefly, Your Honor.

15 We have two motions adjourned until  
16 April 26. It's the motion of Redding Municipal Light  
17 Department and others for an entry of Orders  
18 confirming applicability of the stay, or in the  
19 alternative for relief from the stay. Then we have  
20 the motion of the United States Bank to compel the  
21 Debtors to pay administrative claims, and withdrawal  
22 of the motion to compel Debtors to assume or reject  
23 the Tiverton and Rumford projects. I am sorry. The  
24 third would be the hearing on notice rejecting

25 certain executory contracts is also adjourned to the

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2 26th. That is the end of the calendar, Your Honor.

3 THE COURT: Thank you all.

4 MR. CANTOR: Have a nice holiday.

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C E R T I F I C A T E

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STATE OF NEW YORK       )  
                                  ) ss.:  
COUNTY OF NEW YORK     )

I, ROBERT PAYENSON, a  
Shorthand Reporter and Notary Public within  
and for the State of New York, do hereby  
certify:

I reported the proceedings in the  
within-entitled matter, and that the within  
transcript is a true record of such  
proceedings.

I further certify that I am not  
related, by blood or marriage, to any of  
the parties in this matter and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 18th day of April,  
2006.

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ROBERT PAYENSON